

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**STANLEY WHITNEY,** )  
 )  
 **PLAINTIFF** )  
 )  
 **v.** )  
 )  
 **WAL-MART STORES, INC., ET AL.,** )  
 )  
 **DEFENDANTS** )

**Civil No. 03-65-P-H**

**ORDER AFFIRMING RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the court on December 16, 2003, with copies to counsel, his Memorandum Decision on Defendants' Motion to Exclude Evidence and Recommended Decision on Motions for Summary Judgment and Defendants' Motion to Dismiss. The defendants filed an objection to the Recommended Decision on December 29, 2003, and the plaintiff filed his objection on January 13, 2004. I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision, and determine that no further proceeding is necessary.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendants' motion to dismiss Count III (Docket Item 33) is **GRANTED** as to defendant Swink and is otherwise **DENIED**. The plaintiff's motion for partial summary judgment (Docket Item 19) is **DENIED**. The defendants' motion for summary judgment (Docket Item 21) is **GRANTED** as to Count II, as to Count I against defendant Swink, and as to Count I against defendant Wal-Mart insofar as it seeks relief under 29 C.F.R. § 825.208(c), and is otherwise **DENIED**. Remaining for trial is Count I (except insofar as it seeks relief under 29 C.F.R. § 825.208(c)) and Count III against defendant Wal-Mart Stores, Inc.

**So ORDERED.**

**DATED: JANUARY 21, 2004**

/s/D. BROCK HORNBY

**D. BROCK HORNBY**

**UNITED STATES DISTRICT JUDGE**